

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2913 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

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SANJAYBHAI N SHAH

Versus

GUJARAT INDUSTRIAL DEVELOPMENT CORPORATION

Appearance:

MS KJ BRAHMBHATT for Petitioner No. 1

M/S TRIVEDI & GUPTA for Respondents

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 28/06/2001

ORAL JUDGEMENT

What is challenged in this petition under Article
226 of the Constitution is the action of the
respondent-Gujarat Industrial Development Corporation
acting through other respondents taking over possession

of plot No.1018 admeasuring 6750 sq. mts. in GIDC Estate at Ankleshwar and the petitioner has also prayed for a direction to the respondent-Corporation to reimburse the petitioner in the sum of Rs.1,50,000/- for the cost of construction incurred by the petitioner or to direct the respondents to pass on to the petitioner the sum of Rs.7,76,250/- fixed by the respondents as the premium price of the said plot and to return to the petitioner the revenue charges paid by him.

2. The petitioner submitted an application dated 3-6-1978 for granting the petitioner a plot of land for industrial purpose in GIDC Estate at Ankleshwar. By letter dated 23-2-1979, the respondent- Corporation allotted plot No.1018 in GIDC Estate at Ankleshwar which plot admeasured 6750 sq. mts.. The premium price of the plot was fixed at Rs.1,02,500/-. The petitioner was given possession of the open plot on 25-4-1979. An agreement was also entered into between the parties. Clause 5 (d) of the agreement required the petitioner licensee to commence construction on the plot for being used as an industrial factory and to put up such construction within a period of two years from the date of the agreement. Clause 9 of the agreement required the licensee to obtain certificate from the Executive Engineer of the GIDC certifying that the factory building and works have been erected in accordance with the terms of the agreement. It was upon grant of certificate that the licensor was to execute a lease in favour of the licensee for a period of 99 years from the date of giving possession to the licensee. Clause No.13 of the agreement provided that in the event of any breach of any condition, the licensor shall be entitled to terminate this agreement by giving 24 hours notice.

3. After the agreement was executed as aforesaid, the petitioner was given possession of the open plot of land on 25-4-1979. It is the petitioner's case that the petitioner got building plans approved on 14-6-1979. The petitioner also applied for getting water connection and upon the petitioner complying with the requisite procedure including deposit of necessary charges and security deposit, water connection was also granted to the petitioner on 31-8-1979. In September, 1979, the petitioner applied for electricity connection, which was also granted. The petitioner also applied for telephone connection in June, 1981. In October, 1981, the petitioner even tried to get residential plot from the respondents. The petitioner also paid a sum of Rs.8250/for such residential plot admeasuring 105 sq.mts..

4. However, respondent No.3, a senior officer of the respondent-Corporation at Surat issued a show cause notice on 23-2-1982 calling upon the petitioner to show cause why the agreement between the parties should not be terminated for not commencing construction within stipulated time. The petitioner replied to the same on 22-3-1982 (Annexure D) stating that the petitioner had already started construction work in 1979 in support of which GIDC's water bill dated 2-11-1979 was enclosed. The petitioner also stated that construction work was to come to an end. Respondent No.3 passed the impugned order dated 3-5-1982 (Annexure E Page 36) terminating the agreement dated 25-4-1979. The petitioner's case is that the said order dated 3-5-1982 was never implemented till the year 1991. In the meantime, the respondent-Corporation was addressing letters to the petitioner regarding nonpayment of installments but none of those letters contained any allegation about not putting up construction on the land in question. It is the petitioner's case that for the first time the respondents took over possession of the land behind the back of the petitioner on 18-2-1987 although in the meantime the petitioner had paid certain amounts as per the demands made by the respondents including Rs.20,000/- on 28-1-1985 and Rs.2390/- on 9-10-1985. In any case, there is no dispute about the fact that the respondents did take over possession of the land in question from the petitioner in February, 1987. Upon payment of Rs.18,750/- on 5-3-1987, possession was restored to the petitioner. Again in March, 1989, the respondents called upon the petitioner to pay installment of Rs.24,568/- which was paid by the petitioner on 31-3-1989. The petitioner's case is that in spite of the aforesaid proceedings and orders, the respondents required the petitioner to pay rent/installments and ultimately on 4-1-1991, respondent No.2 passed an order for taking over possession of the plot in question from the petitioner. In response thereto, the petitioner addressed letter dated 31-1-1991 to the respondents to restore possession. On 25-2-1991, respondent No.2 informed the petitioner that the plot in question was reallocated to another party. It is against the aforesaid action of the respondent that the petitioner has approached this Court.

5. In response to Rule, affidavit-in-reply has been filed on behalf of the respondent-Corporation and also rejoinder and sur-rejoinder affidavits are filed. The learned counsel for the parties are heard at length.

6. The sum and substance of the submissions made by

the learned counsel for the petitioner is that the impugned orders passed by the respondents for evicting the petitioner under the provisions of Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972, are illegal and vitiated by non-application of mind. As far as the allegation of non-construction or non-utilisation of the plot is concerned, it is submitted by the learned counsel for the petitioner that the petitioner had already utilized the land in question by putting up construction thereon and that the same was done in accordance with the relevant provisions of agreement. The learned counsel for the petitioner has referred to certain documents in support of her contention that the petitioner had already put up construction on the land in question.

It is further submitted that the second allegation against the petitioner was regarding non-payment of dues, which dues were also cleared by the petitioner and, therefore, there was no reason for the respondents to terminate the agreement or to take back possession of the plot in question from the petitioner.

7. As regards the ground of nonpayment of dues, the learned counsel for the petitioner submits that all the dues were already paid by the petitioner before the impugned action was taken by the respondents for taking away possession from the petitioner in January, 1991 and, therefore, the alleged cause of action for taking back possession of the plot in question from the petitioner does not survive. The learned counsel for the petitioner has also made very serious allegations against respondent No.4 submitting that it was because the petitioner did not agree to act as per the illegal and unreasonable demands of respondent No.4 that the order came to be passed by the respondents after a period of 9 years from the date on which the eviction order was passed against the petitioner on 15-6-1982.

8. On the other hand, Mr. Trivedi with Mr. K.J. Macwan for the respondent-Corporation have vehemently opposed the petition and have submitted that the action of the respondents was fully justified. It is submitted that the petitioner had not put up any construction on the land in question and the allotted land remained unutilised and idle for more than ten years. It is submitted that after the land was taken away from the petitioner, since it admeasured more than 6000 sq.mts., the respondent-Corporation subdivided it into four subplots and at present all those plots are being occupied and utilised by other entrepreneurs and they may

not be disturbed.

9. Having heard the learned counsel for the parties, it appears to the Court that the petition raises highly disputed questions of fact, more particularly, on the question whether the petitioner had put up the factory premises on the land in question between 1980 and 1990 i.e. prior to taking over possession of the land by GIDC in January, 1991. Ordinarily, this court would have relegated the petitioner to an alternative remedy like a civil suit where such a disputed question of fact should be thrashed out. However, considering the fact that a span of ten years has already elapsed since the date of institution of the petition, the Court has made a limited inquiry for the purpose of ascertaining whether the denial put up by the respondent-Corporation regarding the petitioner's assertion of construction of factory premises is so arbitrary or unreasonable as to call for interference of this Court under Article 226 of the Constitution. It is from this limited angle that the Court has examined the matter and heard the learned counsel for the parties.

10. Ms. Brahmabhatt, learned counsel for the petitioner, has strongly relied on the letter dated 16-6-1982 at Annexure I to the rejoinder affidavit (Page 121) for contending that even as per the Officer of the respondent-Corporation the petitioner had constructed the factory premises on the land in question. That letter dated 16-6-1982 was written by the Deputy Engineer of the respondent-Corporation to the petitioner. Since heavy reliance has been placed upon the said letter, the same is quoted verbatim:

To 16-6-1982
Sanjay N. Shah
1018 G.I.D.C. Estate,
Ankleshwar.

Sub: Water Meter

Sir,

During the visit of your factory, T.O.

had found that you have installed your water meter in a dark room under the ground level. Since long time our water meter reader is not able to read you water meter. Hence you are requested to install your water meter outside the room at 2' height above the ground level and provide water meter chamber with lock & key

arrangement under intimation of T.O. immediately.

Thanking You.

The learned counsel for the petitioner has submitted that the very fact that the Deputy Engineer has used the words 'factory' and 'room' indicate that the petitioner had already constructed the factory premises prior to 16-6-1982.

11. On the other hand, Mr. Macwan for the respondent-Corporation has submitted that the Deputy Engineers of the GIDC Estates are required to visit a number of premises, and most of such factory buildings are already constructed and, therefore, out of force of habit, whenever the officers submit reports or write letters, they use the words "visit of factory" or "visit to the factory". It is further submitted that the letter was written by the Deputy Engineer for the limited purpose of making reference to location of the water meter installed by the petitioner on the plot in question and that there was no reference to any factory building as such.

12. There appears to be some substance in this submission made on behalf of the respondent-Corporation that the letter was written in the context of the installation of the water meter in a dark room under the ground level. It is well-known that before any building is constructed, the building contractor generally constructs an underground water tank. In the facts and circumstances of this case, the building contractor also appears to have constructed a room under the ground level near underground water tank and the water meter was installed there. The thrust of the letter was that the water meter was required to be installed outside the room at 2 ft. height above the ground level and that the meter was required to be kept in Chamber with lock and key. There is nothing in the letter which would indicate that the petitioner had already constructed a factory building on the land in question.

13. Learned counsel for the petitioner has also referred to letter dated 6-5-1982 (Annexure F Page 37) written by the petitioner to the Deputy Chief Executive Engineer of the respondent at Surat wherein it is mentioned that the petitioner had already started the construction in 1979 and that factory shed was on completion stage. Similarly, reference is made to letter dated 14-8-1982 (Annexure G Page 38) in similar vein. Although these two letters do support the petitioner's

case to some extent, since they were written by the petitioner himself, the Court called upon the learned counsel for the petitioner to show independent evidence in support of the assertion about construction of the factory building on the land in question, the learned counsel for the petitioner was not in a position to show any other evidence to prove that the factory building was constructed on the land in question by 1982. It is not possible to believe that if the petitioner had completed construction of the factory shed in 1982, he would not start utilising the shed till 1991 and would not start manufacturing activities. The petitioner could have produced the relevant licences, the accounts and other documents to show that not merely the factory building was constructed but he had also started manufacturing activities.

14. It is true that in the meantime, the respondent -Corporation was writing letters to the petitioner regarding nonpayment of installments and possession was also taken away from the petitioner on a couple of occasions which possession was restored on the petitioner paying outstanding installments. In fact the learned counsel for the petitioner has also based the petitioner's case on this score and submitted that if the petitioner had committed breach of the condition regarding completion of construction within two years from the date of agreement, the respondents would have mentioned that fact in various notices issued between 1982 and 1987 and would also not have restored the possession to the petitioner merely upon the petitioner paying the outstanding installments.

There is, however, considerable substance in the submissions made by Mr. Macwan for the respondent-Corporation that the correspondence regarding outstanding installments was being carried on by the Accounts and Audit Department of the respondent-Corporation whereas the non-utilisation of plot was being looked after by another Department and that since there was no coordination between the two Departments of the respondent-Corporation, in the notices sent by the Accounts/Audit Department, there was no reference to breach of condition regarding construction and the possession was restored to the petitioner after payment of installments. It, therefore, does not necessarily follow that the petitioner had not committed breach of the condition regarding completion of construction within two years.

15. In view of the above, this Court is not inclined

to accept the petitioner's assertion that the petitioner had put up the factory building on the land in question by the year 1982 and that there was no breach of condition regarding completion of construction of the factory premises.

Even otherwise the learned counsel for the petitioner states that the petitioner has purchased another plot and is carrying on his industry there from the year 1991. Considering this fact and the fact that the plot in question has been subdivided by the respondent-Corporation into four subplots and those subplots are allotted to four different parties who have been carrying on their industries for the last more than ten years, this Court is not required to consider the question of restoration of the plot to the petitioner.

16. The only question, therefore, which now survives for consideration is whether the petitioner is entitled to any amount as claim by him in the petition. The petitioner has prayed for reimbursement of Rs.1,50,000/- for the cost of construction. Since the petitioner's case that he has constructed the factory building is not accepted, there cannot be any question of reimbursement of such cost of construction. The petitioner has also prayed for a direction to the respondents to give the petitioner Rs.7,76,250/- as premium price of the said plot. This also cannot be granted because if the respondent-Corporation was justified in taking back the plot from the petitioner for breach of condition, it does not lie in the petitioner's mouth to claim the benefit of any premium which the respondent-Corporation may have earned from the subsequent allottees.

17. However, even according to the case of the respondent-Corporation, the petitioner was entitled to get a refund of Rs.35,663/- as per the order dated 17-5-1991 (Annexure V to the reply affidavit). The break-up of this amount is given in the said order and is reproduced hereunder.

- (i) Blockup interest Rs.55029/-
 - (ii) Loss of P.I. Rs.23400/-
 - (iii) Service Charges Rs. 4389/-
 - (iv) N.A.A. Rs.11340/-
 - (v) L.R. Rs. 108/-
 - (vi) Notified tax Rs. 7578/-
 - (vii) Penalty 2% Rs. 2050/-
 - (viii) Water charges Rs. 1690/-
 - (ix) Interest on subsidy Rs. 1001/-
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Total Rs.106585/-

(x) 50% Land price difference Rs. Nil
(xi) 100% ... price difference Rs. Nil
(xii) Amount paid by party Rs.142248/-
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Total Rs.142248/-

(xiii) Total to be refunded to party Rs.35663/-

(emphasis supplied)

18. At the hearing of this petition, in response to a query from the Court - whether the amount was paid to the petitioner, the learned counsel for the respondent-Corporation states that the petitioner has not accepted the said amount because of the disputes raised by him and that the amount is still lying with the respondent-Corporation. The learned counsel for the petitioner submits, without prejudice to the petitioner's rights and contentions urged in this petition, that the respondent-Corporation was required to return the entire amount of Rs.1,42,248/- without making any deductions whatsoever as they wrongfully deprived the petitioner from his right to carry on manufacturing activity on the land in question.

While such a high pitched case of the petitioner cannot be accepted, there is some substance in the contention urged by the learned counsel for the petitioner that item No.2 - loss of penal interest calculated at Rs.23,400/- is required to be deleted from the adjustment made by the Corporation because in the notice dated 29-12-1990 (Annexure E Page 59), the respondent- Corporation (even while demanding installments upto to March, 1991) did not claim any penal interest and, therefore, the levy of penal interest is not justified.

The learned counsel for the respondent-Corporation has, however, submitted that the amount was charged for the delay in payment of installments. It is stated that the penal interest was calculated at the rate of 3%p.m. over and above the regular interest charged by the Corporation.

Since notice dated 29-12-1990 was issued less than a month before the order for recovering possessing was passed, the Court is inclined to accept the

contention urged on behalf of the petitioner that since no penal interest was claimed in the aforesaid notice, the respondent-Corporation was not justified in claiming any penal interest from the petitioner. In the facts and circumstances of the case, the Court, therefore, upholds the contention of the petitioner and directs the respondent-Corporation to delete item No.2 from the list of adjustments.

19. It is further required to be noted that since the amounts remained with the respondent-Corporation for all these years, it would be in the fitness of things to direct the respondents to return the amounts of Rs.35,663/- + Rs.23400/- along with compound interest at the rate of 12%p.a. interest to be compounded on yearly basis w.e.f. 4-1-1991. These directions shall be complied with within two months from the date of receipt of the writ of this Court or a certified copy of this order, whichever is earlier. The amount shall be sent to the petitioner at the following address:

Sanjay Nathalal Shah,
801, Shiv Apartment,
Opp. Mohan Park,
Ghoddod Road,
Surat - 395 007.

20. Rule is made absolute to the aforesaid extent with no order as to costs.

zgs/-